

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
: 18-CR-00633 (ERK-6)  
UNITED STATES OF AMERICA, :  
: :  
: :  
- versus - : U.S. Courthouse  
: Brooklyn, New York  
ZHUKOV, ET AL., :  
: December 3, 2021  
Defendants : 2:47 p.m.  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING  
BEFORE THE HONORABLE ERIC R. KOMITEE  
UNITED STATES DISTRICT JUDGE

**A P P E A R A N C E S:**

**For the Government:**

**Breon S. Peace, Esq.**  
United States Attorney

BY: **Saritha Komatireddy, Esq.**  
**Artie McConnell, Esq.**  
**Alexander Mindlin, Esq.**  
Assistant U.S. Attorneys  
271 Cadman Plaza East  
Brooklyn, New York 11201

**For the Defendant:**

**George C. Grasso, Esq.**  
Of Counsel  
Bukh Law Firm PLLC  
1123 Avenue Z  
Brooklyn, NY 11235

**Transcription Service:**

**Transcriptions Plus II, Inc.**  
61 Beatrice Avenue  
West Islip, New York 11795  
RL.Transcriptions2@gmail.com

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1 THE COURT: Please be seated, everyone.

2 THE CLERK: He doesn't need the interpreter?

3 Is that what you said? She'll be on standby.

4 THE DEFENDANT: Yes.

5 THE CLERK: Criminal Cause for Sentencing, *The*  
6 *United States of America v. Sergey Ovsyannikov*, Docket  
7 Number 18-CR-633.

8 Would you all please state your appearances for  
9 the record starting with the government?

10 MR. MINDLIN: Yes. Good afternoon, your Honor.  
11 For the government, AUSA Alexander Mindlin. Beside me  
12 are my colleagues, AUSA Artie McConnell and Saritha  
13 Komatireddy, and our case agent Detective Mark Rubens.

14 THE COURT: Good afternoon.

15 MR. MINDLIN: As well as probation -- pardon  
16 me, ma'am. Go ahead.

17 MS. LOPEZ: Good afternoon, your Honor. Alyssa  
18 Lopez, United States Probation Department.

19 THE COURT: Good afternoon. Welcome.

20 MR. GRASSO: Good afternoon, your Honor.  
21 George C. Grasso of counsel for Bukh Law Firm, 1123  
22 Avenue Z, Brooklyn, New York.

23 THE COURT: Good afternoon. And good afternoon  
24 to the defendant. Would you pronounce your name for me?

25 THE DEFENDANT: Sergey Ovsyannikov. Good

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1 afternoon.

2 THE COURT: Good afternoon.

3 THE CLERK: I just want to -- and we're joined  
4 by Russian interpreter Isabelle Avrutin. Would you  
5 please stand and raise your right hand?

6 (Interpreter sworn)

7 THE CLERK: Would you state your name for the  
8 record, please?

9 THE INTERPRETER: Isabelle Avrutin.

10 THE CLERK: Thank you.

11 THE COURT: Okay. So good afternoon, everyone.  
12 We are here, as you all know, for sentencing in this case  
13 today. Is the interpreter on standby or are we  
14 simultaneously interpreting?

15 THE INTERPRETER: I was told that I should be  
16 on standby.

17 THE COURT: Okay. All right. So I'll advise  
18 the defendant if there's anything that anyone says that  
19 you don't understand fully, feel free to raise your hand  
20 and let us know and we will make sure to repeat anything  
21 you may have missed. Obviously, the person -- you and I  
22 are the two people here who most need to understand  
23 what's being said by everybody today and I'll be happy to  
24 stop anybody who I don't understand fully and you should  
25 feel free to speak up if there's anything you don't

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1 understand as well. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. You speak English at some  
4 level?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. Would you like the entirety  
7 of today's proceeding to be translated?

8 THE DEFENDANT: I think not. I can understand  
9 clearly what you are saying.

10 THE COURT: Okay. All right. Any combination  
11 you want is fine with me. So as I say, feel free to  
12 speak up when appropriate.

13 The sentencing today is on three counts of  
14 conviction, to having to do with wire fraud and wire  
15 fraud conspiracy, and one to do with aggravated identity  
16 theft. And before we begin, I will explain my process  
17 for this proceeding today.

18 First of all, I'm going to remove the mask that  
19 I'm wearing. I'm behind this Plexiglas divider here and  
20 fully vaccinated. And to the extent I'm speaking for  
21 extended periods of time, it will help me and the clarity  
22 of the recording that we are making to be without the  
23 mask. We are making an electronic sound recording of  
24 today's proceedings and so it will be important that  
25 anybody who's speaking find themselves fairly close to

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1 the microphone in front of them.

2           So my process for today, first of all, I'll say  
3 a word about the counts of conviction. Second, I'll list  
4 the submissions that I've received and considered in  
5 connection with sentencing. And the purpose of doing  
6 that is to assure myself that I received everything the  
7 parties believe I should have received and that you all  
8 have received everything that anyone else believes you  
9 should have received such that we are all working off the  
10 same information.

11           Next, we will discuss the pre-sentence report  
12 prepared by the probation department. I understand there  
13 have been a couple of rounds of objections thereto.  
14 There was an amendment issued recently. We will proceed  
15 accordingly.

16           Next, under federal sentencing law, I must  
17 determine what the guidelines range is under the  
18 sentencing guidelines system. The United States  
19 Sentencing Guidelines, as you now know from the plea  
20 hearing, are advisory which means I am not bound to  
21 follow them, but I still must determine what the  
22 guidelines range is and I must consider the guidelines as  
23 well as any departures therefrom that might apply.

24           After that, I will give the attorneys an  
25 opportunity to address the Court and to make arguments.

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1 And then the defendant shall have the right, if he  
2 chooses, but not the obligation to make a statement to  
3 the Court before I impose sentence.

4           Once all of that has happened, I will most  
5 likely step out for a five or ten minute break just to  
6 collect my thoughts on everything I have just heard. And  
7 when I return, I will review the sentencing factors under  
8 the United States Code in order to tell you what factors  
9 I think go into determining the appropriate sentence. By  
10 statute those include your personal history, the offense  
11 conduct, and many other factors that we will discuss.  
12 And following that discussion, I will impose sentence.

13           Do you understand the process?

14           THE DEFENDANT: Yes, sir.

15           THE COURT: Do you have any questions at this  
16 point?

17           THE DEFENDANT: No, sir.

18           THE COURT: Does the government wish to have  
19 any victims present in the courtroom?

20           MR. MINDLIN: No, your Honor.

21           THE COURT: All victim notifications that you  
22 believe are required have been made?

23           MR. MINDLIN: Yes.

24           THE COURT: Okay. All right. So turning to  
25 the defendant's plea of guilty, he pleaded guilty before

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1 Magistrate Judge Gold on September 24, 2019 to three  
2 counts of a 13 count indictment.

3 Count 1 charged conspiracy to commit wire fraud  
4 in violation of 18 U.S. Code Sections 1343 and 1349  
5 between September 2014 and December 2016.

6 And count 5, alleged conspiracy to commit wire  
7 fraud in violation of the same statutes but for a  
8 different time period. This time between December 2015  
9 and October 2018. And the government should correct me  
10 if I get any of this wrong in any way. Or anybody should  
11 correct me I should say.

12 And also, the plea of guilty to count 7 of the  
13 indictment which alleged aggravated identity theft in  
14 violation of 18 U.S. Code Section 1028A(a)(1) in that  
15 case between December 2015 and October 2018. Are we all  
16 on the same page there?

17 MR. MINDLIN: Yes, your Honor.

18 MR. GRASSO: Yes, your Honor.

19 THE COURT: Okay. And I've received and  
20 reviewed the transcript of the defendant's plea before  
21 Magistrate Judge Gold. Starting with defense counsel, is  
22 there any reason I should not accept the plea in this  
23 case?

24 MR. GRASSO: No, your Honor.

25 THE COURT: From the government?

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1 MR. MINDLIN: No, Judge.

2 THE COURT: Okay. Based on the information  
3 contained in the transcript, including the allocution and  
4 also in the pre-sentence report that I received, I now  
5 accept the guilty plea. The record demonstrates that the  
6 plea entered before Judge Gold was entered knowingly and  
7 voluntarily and that there exists a factual basis for it.  
8 Accordingly, I adjudicate the defendant guilty of those  
9 three offenses.

10 Let me turn now to just listing the documents  
11 that I have received in connection with today's  
12 proceeding.

13 First, the pre-sentence report dated September  
14 17, 2021. I think all dates will be 2021. The probation  
15 department's sentencing recommendation dated that same  
16 day. The sentence recommendation is a statement from the  
17 probation department as to what they believe the  
18 appropriate sentence in this case would be. It is not  
19 binding on me. But the probation department sees every  
20 defendant sentenced in this district and they have a lot  
21 of important context, more than any individual judge  
22 does. And because I consider the probation department's  
23 recommendation to be relevant to my thinking, I typically  
24 discuss it on the record and inform the parties if  
25 they're not already aware of what the recommendation is.



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1 I also have the defendant's sentencing  
2 memorandum dated November 22nd and four exhibits filed  
3 therewith.

4 Exhibit 1 was a series of letters in support  
5 including from the defendant's parents, wife, a teacher,  
6 former colleagues, and an inmate at the MDC.

7 Exhibit 2 thereto was a letter from the  
8 defendant's wife.

9 Exhibit 3 is a table produced by the United  
10 States Sentencing Commission showing the extent of  
11 certain departures listed by type of crime.

12 And Exhibit 4 is a letter from the defendant  
13 himself.

14 We have objections to the PSR from the defense  
15 dated November 22nd. And I think those are the  
16 objections that the defense has now moved to withdraw.  
17 Is that correct?

18 MR. GRASSO: That is correct, your Honor. We  
19 have discussed it with the government and I think that  
20 everything is resolved.

21 THE COURT: Okay. So I have that document.  
22 I've reviewed it, but I also grant at this point the  
23 motion to withdraw it.

24 MR. GRASSO: Thank you, Judge.

25 THE COURT: I have the government's sentencing

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1 submission dated November 23rd, and I have an amended  
2 version of the pre-sentence report that the probation  
3 department filed yesterday, December 2nd, that to a  
4 degree took into account the defendant's objections that  
5 we just discussed.

6 Again, beginning with the defense, is there  
7 anything else I should have that I did not list there?

8 MR. GRASSO: No, your Honor, I believe that  
9 covers it.

10 MR. MINDLIN: Your Honor, the defendant filled  
11 out a financial affidavit today.

12 THE COURT: Yes.

13 MR. GRASSO: Yes.

14 THE COURT: Yes, I should add that. I just  
15 received within the last hour or so a financial  
16 affidavit. The actual title of the document is United  
17 States Department of Justice Financial Statement, and  
18 it's on a DOJ form where the form itself is dated  
19 December of 2016. And it's 35 pages long. And the copy  
20 I have is signed by the defendant and dated today's date  
21 by the signature box. And I assume we will be discussing  
22 the financial affidavit at one or more points today.

23 Let me ask defense counsel have you and your  
24 client had an opportunity to read and discuss the pre-  
25 sentence report in its entirety?

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1 MR. GRASSO: Just earlier today, your Honor.

2 THE COURT: I'm not talking about the addendum  
3 now, I'm talking about the PSR itself.

4 MR. GRASSO: The PSR, yes.

5 THE COURT: You discussed it today for the  
6 first time?

7 MR. GRASSO: No, no. Personally, yes. My  
8 office has discussed it with him at length.

9 THE COURT: When you say your office, is that  
10 Mr. Fukh?

11 MR. GRASSO: Mr. Bukh. Correct.

12 THE COURT: Bukh. Okay. Let me ask the  
13 defendant, do you wish for any additional time to discuss  
14 the PSR, pre-sentence report, or any addendum to that  
15 document with your counsel who's present here today?

16 THE DEFENDANT: No, Your Honor. I already  
17 discussed several times.

18 THE COURT: With Mr. Bukh?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay. So putting aside, and this  
21 is a question for defense counsel again, putting aside  
22 the guidelines calculations which we'll take up in a few  
23 moments, do you have any remaining objections to the pre-  
24 sentence report putting aside the guidelines calculation?

25 MR. GRASSO: No, your Honor.

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1 THE COURT: Okay. Is either party seeking an  
2 evidentiary hearing on any issue today beginning with the  
3 defense?

4 MR. GRASSO: No, your Honor.

5 MR. MINDLIN: No, your Honor.

6 THE COURT: Okay. All right. So turning next  
7 to the advisory guidelines calculation, let me begin just  
8 by confirming that both parties agree it's the 2018  
9 version of the guidelines that applies. Is that correct?

10 MR. MINDLIN: Yes, Judge.

11 MR. GRASSO: Yes, Judge.

12 THE COURT: Okay. So there is a dispute of  
13 sorts I suppose about the application of the leadership  
14 role enhancement. It appears at Note 1 in the  
15 government's sentencing memorandum. I take it we're --  
16 hold on just one second. So the PSR contains a three  
17 level enhancement adjustment I should say for role in the  
18 offense. The government articulates the view that the  
19 defendant really was a leader and therefore the four  
20 level enhancement is appropriate. Is that correct?

21 MR. MINDLIN: Yes, that's the government's  
22 view, your Honor.

23 THE COURT: Okay. I think that's right based  
24 on the facts. I think the facts laid out in the PSR  
25 itself and in the indictment really leave no question

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1 that that's the correct view. The defendant was a  
2 substantial owner of the business, not the 100 percent  
3 owner but entitled I think to 50 percent of the profits,  
4 exercised supervisory authority over people below him in  
5 the scheme, recruited people to participate in the  
6 scheme. Does the defense dispute the role enhancement  
7 for leadership role?

8 MR. GRASSO: I think that the main dispute from  
9 the defense is the dichotomy, and this somewhat lies in  
10 semantics I suppose, but the dichotomy in my client's  
11 role of leadership in these organizations as opposed to  
12 the co-defendant, Mr. Zhukov, and that Mr. Zhukov  
13 actually masterminded the operation. If it was to be  
14 looked at from the point of view legal causation, I would  
15 say that but for Mr. Zhukov's masterminding of the  
16 situation, then we may not be sitting here today.

17 THE COURT: Okay. But --

18 MR. MINDLIN: Your Honor --

19 THE COURT: -- it's not -- yes. Please.

20 MR. MINDLIN: If I could briefly address the  
21 matter, your Honor?

22 Mr. Ovsyannikov and Mr. Zhukov of course led  
23 separate schemes. Mr. Ovsyannikov provided some  
24 technical assistance to Mr. Zhukov in his scheme which is  
25 why he's charged with respect to those schemes.

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1 With respect to Mr. Ovsyannikov's scheme, the  
2 government agrees with the Court that he was a leader in  
3 that scheme. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] And of course, it's a one point  
8 difference in the offense level, your Honor.

9 THE COURT: Yes. We are talking about a fairly  
10 minor difference in the offense level and not one, I  
11 don't believe, that will affect where I ultimately come  
12 out here but I still want to get the guidelines  
13 calculation right. And so let me just ask defense  
14 counsel, you're not disputing that your client owned a  
15 half share of Adzos?

16 MR. GRASSO: No.

17 THE COURT: If I'm pronouncing that correctly.

18 MR. GRASSO: No, your Honor. I'm not disputing  
19 my client's interest in these organizations or his share  
20 of interest.

21 THE COURT: You're not disputing furthermore  
22 that he recruited accomplices including Mr. Timchenko, is  
23 that correct?

24 MR. GRASSO: That's correct.

25 THE COURT: You don't dispute that he exercised

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1 overall responsibility for all technical aspects of the  
2 scheme at Adzos? Is that correct?

3 MR. GRASSO: That is correct, your Honor. I  
4 don't want to get into semantics, you know.

5 THE COURT: I mean tell me -- my ears did perk  
6 up a little bit when you said that your client would not  
7 be sitting here today but for Mr. Zhukov's conduct. Is  
8 that really true absent Mr. Zhukov your client would  
9 still be living a law abiding life today with --

10 MR. GRASSO: I believe that he was drawn into  
11 the scheme by Mr. Zhukov. They had a prior existing  
12 relationship. My client's not a hacker in the  
13 traditional sense. He is a very intelligent man but he  
14 is --

15 THE COURT: Those things are not mutually  
16 exclusive obviously.

17 MR. GRASSO: Of course not. But he's not a  
18 hacker. He I think by his own admission would readily  
19 state that Mr. Zhukov's technical knowledge in terms of  
20 cybercrime and hacking goes far beyond my own client's.  
21 And that's all.

22 THE COURT: Okay. Given the undisputed facts  
23 that the defendant here, Mr. Ovsyannikov, owned a half  
24 share of this Adzos entity and the profit entitlement  
25 that carried with it, given his role in recruiting others

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1 including Mr. Timchenko and given his broad  
2 responsibility to oversee the technical aspects of Adzos'  
3 participation here, I do believe that the leadership role  
4 enhancement is appropriate. And so when I calculate the  
5 guidelines I will include the four level enhancement. As  
6 I say, I believe -- I could be surprised by information  
7 still to come but at this point I believe that the  
8 sentence I impose will be unaffected by the leadership  
9 role enhancement whether it's three points or four  
10 points.

11 MR. GRASSO: Yes, your Honor. And I don't mean  
12 to make a mountain of a molehill by any stretch of the  
13 imagination. I just thought that it would be worth  
14 pointing out.

15 THE COURT: Thank you. Okay. I think that's  
16 the only open question we had with respect to the  
17 guidelines. Is that correct from defense counsel's  
18 perspective?

19 MR. GRASSO: Yes, it is, your Honor.

20 THE COURT: And from the government?

21 MR. MINDLIN: Yes, your Honor.

22 THE COURT: Okay. All right. So therefore,  
23 with that one change, namely the imposition of the four  
24 level enhancement for role, instead the three level, I  
25 adopt the pre-sentence report in its entirety. Correct?



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1 I'm looking at the defense counsel now.

2 MR. GRASSO: No objection, your Honor.

3 MR. MINDLIN: Yes, your Honor.

4 THE COURT: Okay. So therefore, the offense  
5 level calculation that applies is as follows. We group  
6 counts 1 and 5 for purposes of determining the base  
7 offense level. And under Section 2X1.1(a), the base  
8 offense level we are working from is 7.

9 We add 22 levels to that base to reflect the  
10 loss amount of \$35,800,000 which on the loss table is  
11 greater than 25 million but less than 65 million. That's  
12 a 22 level enhancement pursuant to Section 2B1.1(b)(1)(L)  
13 as llama.

14 Because the offense involved ten or more  
15 victims, we add another two levels.

16 And because a substantial part of the scheme  
17 was committed from outside the United States, we add  
18 another two levels.

19 We add the four level adjustment for role that  
20 I mentioned and that leaves us with an adjusted offense  
21 level on the wire fraud counts of 37.

22 We then turn to the adjustment for multiple  
23 counts. Count 7 is excluded from the grouping analysis  
24 under Section 3D1.1(b)(2). And thus we start with the  
25 greater of the adjusted offense levels. That's that of

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1 group 1 or 37 as I just said with no increase in this  
2 case under Section 3D1.4. So after taking Count 7 into  
3 account, we are still left with an adjusted offense level  
4 of 37.

5 Does defense counsel agree with that?

6 MR. GRASSO: By my simple algebra, your Honor,  
7 yes.

8 THE COURT: Okay. The government agrees the  
9 offense level we're working off here is 37?

10 MR. MINDLIN: That's prior to the reduction for  
11 acceptance of responsibility?

12 THE COURT: Prior to the --

13 MR. MINDLIN: Yes.

14 THE COURT: Yes. Minus three levels for  
15 acceptance. That leaves us with a total offense level of  
16 34. We learn from the PSR, and I think nobody's  
17 disputing, that the defendant is in criminal history  
18 category I. And based on a total offense level of 34, a  
19 criminal history category of I, the guidelines  
20 imprisonment range on the sentencing table is 151 months  
21 at the low end to 188 months at the high end of the  
22 range. Does defense counsel agree with that?

23 MR. GRASSO: Yes, your Honor.

24 THE COURT: And the government?

25 MR. MINDLIN: Yes, Judge.

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1 THE COURT: Okay. In terms of supervised  
2 release, Counts 1 and 5 are Class C felonies and the  
3 guidelines therefore imply a term of supervised release  
4 of one year to three years. Count 7 is a Class E felony  
5 which means the guidelines provide for a one-year term of  
6 supervised release. The guidelines fine range is \$35,000  
7 at the low end and \$350,000 at the high end under Section  
8 5E1.2(c)(3).

9 Does the government agree with everything I've  
10 just said?

11 MR. MINDLIN: Yes, Judge.

12 THE COURT: And the defense?

13 MR. GRASSO: Yes, Judge.

14 THE COURT: Okay. And the parties have the  
15 probation department's sentencing recommendation,  
16 correct?

17 MR. MINDLIN: Yes, your Honor.

18 MR. GRASSO: Yes, your Honor. I'm actually not  
19 sure if I have a copy physically in front of me at this  
20 moment but I have it and I have reviewed it.

21 THE COURT: I'll just say for the defendant's  
22 benefit and for the completeness of the record that the  
23 probation department here has recommended a sentence of  
24 68 months, six eight, on Counts 1 and 5 to run  
25 concurrently to one another which means the same 68

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1 months for both of those counts. Plus 24 months custody  
2 on Count 7 which they urge should run consecutively which  
3 means be stacked on top of the 68 month sentence for  
4 Counts 1 and 5 which would yield a total term of  
5 incarceration of 92 months. Let me turn to the probation  
6 department now. That is the correct --

7 MS. LOPEZ: That's correct.

8 THE COURT: -- summary of the probation  
9 department's recommendation?

10 MS. LOPEZ: Yes, your Honor.

11 THE COURT: Okay. And they recommend two years  
12 of supervised release on Counts 1 and 5, one year on  
13 Count 7, all to run concurrently. Restitution in the  
14 amount of \$33,800,000 to be paid to Google due  
15 immediately and payable at a rate of \$25 while in custody  
16 and a rate of 10 percent of gross monthly income  
17 thereafter while on supervised release. Probation  
18 recommends no fine in light of the size of that  
19 restitution order, that contemplated restitution order.

20 Does the defendant have any questions about  
21 anything I've just said either for me or for your  
22 attorney?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Okay. Defense counsel, any  
25 questions or corrections to anything I've just said?

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1 MR. GRASSO: Just to make sure that I heard you  
2 correctly, your Honor, you said that the total  
3 recommended was 92 months, correct?

4 THE COURT: Yes. Probation says that the  
5 defendant should be sentenced to 68 months in custody in  
6 each of Counts 1 and 5, but that those should run  
7 concurrently with one another, so that's a grand total of  
8 68 months, plus a consecutive term of 24 months on Count  
9 7. And by my arithmetic, 68 plus 24 is 92.

10 MR. GRASSO: Thank you, your Honor.

11 THE COURT: Okay. In terms of the statutory  
12 provisions we're dealing with here, each of Counts 1 and  
13 5 carry a statutory maximum term of 20 years imprisonment  
14 and a maximum supervised release term of three years.  
15 There is no mandatory minimum on the wire fraud  
16 conspiracy counts. On Count 7, there is a statutory  
17 mandatory minimum term of imprisonment of two years  
18 pursuant to 18 U.S. Code Section 1028A(a)(1). And the  
19 term of imprisonment on Count 7 I am told must run  
20 consecutively to any other counts under Section  
21 1028A(a)(1).

22 Does the government agree with that  
23 characterization?

24 MR. MINDLIN: Yes, your Honor.

25 THE COURT: That any time imposed on Count 7

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1 must be consecutive?

2 MR. MINDLIN: [REDACTED] [REDACTED] [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

6 THE COURT: Okay. But does that mean you can  
7 ignore it for purposes of consecutive versus concurrent  
8 or ignore it just in terms of what period of  
9 incarceration gets ordered? Do you see what I'm saying?

10 MR. MINDLIN: You know what? No, your Honor.  
11 What I'm saying, and I suspect this is not going to  
12 answer your question, is that the Court can give a total  
13 sentence that does not have to account for any applicable  
14 mandatory minimum under 1028A.

15 THE COURT: Okay. And then just in terms of  
16 the mechanics of how we get there, I can either impose no  
17 time on Count 7 or impose time on Count 7 but ignore the  
18 requirement that that time run consecutively to Counts 1  
19 and 5. I mean I may be able to solve this problem  
20 myself, but I just want to understand the lay of the land  
21 here.

22 MR. GRASSO: I would also have to check the  
23 statute myself, your Honor, but my understanding is also  
24 that the Court does have the discretion to break away  
25 from the consecutive requirement that your Honor is

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1 referring to.

2 MR. MINDLIN: Your Honor, we think the time  
3 must be consecutive. It can be zero, but that zero must  
4 run consecutively.

5 THE COURT: Okay. Let me just read the statute  
6 myself.

7 (Pause in proceedings)

8 THE COURT: Yes, it's sort of odd. So 1028A,  
9 if you look at Section B thereunder it says,  
10 "Notwithstanding any other provision of law, except as  
11 provided in paragraph 4, no term of imprisonment imposed  
12 on a person under this section shall run concurrently  
13 with any other term of imprisonment imposed on a person  
14 under any other provision of law including any term of  
15 imprisonment imposed for the felony during which the  
16 means of identification was transferred, possessed, or  
17 used."

18 But then you look at paragraph 4 because of  
19 except as provided in paragraph 4, and the statute says,  
20 "A term of imprisonment imposed on a person for a  
21 violation of this section may, in the discretion of the  
22 Court, run concurrently in whole or in part only with  
23 another term of imprisonment that is imposed by the Court  
24 at the same time on that person for an additional  
25 violation of this section." I see.

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1 MS. KOMATIREDDY: In other words, your Honor,  
2 two violations --

3 THE COURT: Got it. Yes.

4 MS. KOMATIREDDY: -- of 1028A do not need to be  
5 consecutive.

6 MR. MINDLIN: We're not in that territory.

7 MS. KOMATIREDDY: Right.

8 THE COURT: Right. But we're not in this  
9 section with the wire fraud counts, we're in a different  
10 section. Okay.

11 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15 MR. MINDLIN: 18 USC 3553(e) provides that on  
16 motion to the government, the Court shall have the  
17 authority to impose a sentence below a level established  
18 by statute as a minimum sentence.

19 THE COURT: Thank you.

20 MR. MINDLIN: Yes, your Honor.

21 THE COURT: Okay. So thank you all for bearing  
22 with me. For all three counts, the maximum fine by  
23 statute is \$250,000 unless the alternative fine's  
24 provision overrides that. What is this, the maximum fine  
25 on each count?



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1 MR. MINDLIN: The maximum fine for each of the  
2 wire fraud counts is the greater of 250,000 or twice the  
3 gross gain or gross loss.

4 THE COURT: Remind me of the alternative fines  
5 provision. What's the citation for that?

6 MR. MINDLIN: That's 18 USC 3571.

7 THE COURT: 3571. Thank you. Okay. All  
8 right. So then I think we've established now both how  
9 the United States Sentencing Guidelines operate with  
10 respect to the counts of conviction and also what are the  
11 statutory maximums and minimums for incarceration, for  
12 supervised release, for a fine, and the like.

13 Are there any questions that the defendant has  
14 at this point about anything we've said today?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Okay. All right. As I mentioned  
17 earlier, I have reviewed the parties' written sentencing  
18 submissions in detail, but let me turn to defense counsel  
19 now with an opportunity to be heard at sentencing.

20 MR. GRASSO: Thank you, your Honor. I'm sorry,  
21 I'm just filling in some of my notes.

22 THE COURT: Take your time.

23 MR. GRASSO: Thank you.

24 MR. MINDLIN: Your Honor, before we begin, can  
25 we have a five-minute recess?

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1 THE COURT: Yes.

2 MR. MINDLIN: Thank you, Judge.

3 THE COURT: We will reconvene a little bit  
4 after 3:30.

5 (Off the record)

6 THE CLERK: We are back on the record.

7 MR. GRASSO: So your Honor, may it please the  
8 Court --

9 THE COURT: I'm sorry, was there something that  
10 the government wanted to take up?

11 MR. MINDLIN: No, your Honor.

12 THE COURT: Okay. All right. So we're back on  
13 the record and the floor is with defense counsel for a  
14 further statement in respect of sentencing.

15 MR. GRASSO: Thank you, Judge. And may it  
16 please the Court.

17 Your Honor, as I had mentioned earlier, my  
18 client is a very intelligent man. He's also very  
19 talented. He has always cared for his family and the  
20 people that he knows, the people that are closest to him  
21 in his life. He is a proud husband, he's a father of a  
22 four-year-old daughter who goes by the name of Tasia  
23 (phonetic). She desperately needs his financial,  
24 emotional support and guidance just as any four-year-old  
25 daughter would. She's been deprived of that throughout

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1 this time obviously.

2           However, my client has accepted full  
3 responsibility for his crimes. He has admitted that what  
4 he did was wrong and he takes full accountability for the  
5 charged conduct. He never resisted extradition. [REDACTED]

6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

7 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

8 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

9 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

12 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

13 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

14 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

16 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

21 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

24 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

25 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]



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1 extradition, I think that it's very important to focus on  
2 the inherent inference that the chance of recidivism is  
3 slim to none and could not possibly be lower. It was  
4 clear that he knew from the very start that what he did  
5 was wrong and he immediately regretted his actions, and  
6 he's made that very clear.

7           Additionally, as discussed in great detail in  
8 his sentencing memorandum, Mr. Ovsyannikov received a  
9 credit toward his sentence with a 1.5 multiplier for his  
10 pre-extradition time that was spent in a Malaysia prison  
11 where the conditions of confinement were unduly harsh and  
12 inhuman. Similarly --

13           THE COURT: Sorry, say that again? What is the  
14 1.5 multiplier?

15           MR. GRASSO: For his pre-extradition time spent  
16 in the Malaysia prison.

17           THE COURT: Right.

18           MR. GRASSO: Where the conditions of  
19 confinement were unduly harsh and inhuman.

20           THE COURT: Just remind me where that 1.5,  
21 where does this 1.5 multiplier come from.

22           MR. GRASSO: It's in the sentencing memorandum,  
23 your Honor. It's proposed by our office --

24           THE COURT: Oh, okay.

25           MR. GRASSO: -- that it should be applied and

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1 considered by your Honor in imposing sentence today.

2 THE COURT: Got it.

3 MR. GRASSO: In terms of the harshness of the  
4 prison that he was at in Malaysia, I mean we're talking  
5 no running water, days without food. It's --

6 THE COURT: I'm fully on board with the notion  
7 that the conditions in the Malaysian prison were  
8 grotesque. I'm just asking where the 1.5 number comes  
9 from. Is that just something you --

10 MR. GRASSO: It's a request by defense to be  
11 considered by your Honor in today's sentencing.

12 Mr. Ovsyannikov we believe is entitled to  
13 receive an extra credit for his incarceration at MDC  
14 Brooklyn during the most restrictive conditions of  
15 confinement, this is analogous, due to the pandemic of  
16 novel COVID-19. Recently, as discussed in the sentencing  
17 memo as well, the media has provided even new information  
18 about the horrible conditions of confinement at the  
19 Metropolitan Detention Center in Brooklyn. The reports  
20 indicate that inmates at MDC in Brooklyn face  
21 deteriorating living conditions such as no access to  
22 water, spotty electricity, and the absence of hot food.  
23 It's important to note that this Court provided the co-  
24 defendant a two-year reduction in his sentence for  
25 similar hardship conditions of confinement at MDC. We

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1 believe that Mr. Ovsyannikov should receive at least a  
2 similar reduction.

3 Last but not least, certainly not least, purely  
4 based on his immigration status, Mr. Ovsyannikov is not  
5 eligible for any Bureau of Prison programs commonly  
6 afforded to other inmates who are United States citizens  
7 and thus he has to serve more time in a federal prison  
8 than most other citizens between transport and different  
9 government agencies being involved. There is inherently  
10 a longer period of time that is imposed on him regardless  
11 of your Honor's sentence. Therefore, the Court should  
12 consider this disparity as a relevant sentencing factor  
13 further reducing his sentence under the 3553 factors.

14 Considering the extent of Mr. Ovsyannikov's  
15 remorse, his personal characteristics, his family  
16 circumstances, his conditions of confinement, and the  
17 other sentencing factors considered, discussed in detail,  
18 we do have a very respectfully requested sentence.

19 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

9 So therefore, in light of all of the foregoing,  
10 and other factors that I may not have mentioned that are  
11 included in 3553 that may particularly stand out to your  
12 Honor, I respectfully request that the Court impose a  
13 non-guideline sentence of time served. 18 USC 3553(a)  
14 reads that a sentence should be sufficient but no greater  
15 to achieve the purpose of sentencing.

16 The sentence I propose would meet the needs of  
17 the sentencing statute and at the same time would permit  
18 both Mr. Ovsyannikov to unite with his family who needs  
19 his financial and emotional support and begin rebuilding  
20 a law-abiding life and with no intention of criminality  
21 in his future. Thank you very much.

22 THE COURT: Thank you. Does the government  
23 wish to be heard?

24 MR. MINDLIN: Yes, your Honor.

25 THE CLERK: Remain seated, please.













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1 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

6 THE COURT: Thank you. Okay. So I  
7 foreshadowed at the beginning that I might take a break  
8 either before we hear from the defendant or immediately  
9 after just to collect my thoughts on everything. I'm  
10 feeling a little bit less inclined to need that time  
11 given everything that I've heard. But why don't I turn  
12 at this point to Mr. Ovsyannikov. Would you like to be  
13 heard today?

14 THE DEFENDANT: Yes, your Honor. I'd like to  
15 furnish you my thoughts regarding my sentencing. So  
16 forgive me for reading this. I didn't want to forget  
17 anything.

18 As you know, I have been detained for three  
19 years now away from my family, paying the price for the  
20 terrible mistake that I made. I'm deeply ashamed of the  
21 fact that my four-year-old daughter all this time walked  
22 without father by her side. It's difficult for me to  
23 realize that the most important years of raising a child  
24 still is best years of being a parent, they are spent  
25 away from my family. As a result, I did not have the

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1 opportunity to connect and maintain a healthy  
2 relationship between father and daughter.

3           During my imprisonment, I had the opportunity  
4 to connect with my family only once two years ago. When  
5 I was arrested in Kuala Lumpur, I realize that I had made  
6 a terrible mistake. While I was waiting for the police  
7 to arrive to the airport to arrest me, I was with my wife  
8 and daughter who was a year and six months old at the  
9 time. It was very painful to realize the fact that I  
10 might not see them for a long time. [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

14           There is no excuse for the crimes that I have  
15 committed. It's clear to me I made a mistake. I admit  
16 it. And I'm very ashamed in front of all the people who  
17 suffered financial losses due to my criminal activity. I  
18 thought a lot about what prompted me to commit the crime.  
19 The reasons that I concluded is my own stupidity,  
20 naivete, and hurt instinct. I was blind and I shouldn't  
21 have been involved in those dealings that led to my  
22 arrest and ruined my life. I have understood how my  
23 mistakes were made and I have a firm desire to never  
24 repeat them again.

25           Looking forward my (indiscernible) is a solid

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1 man down the right path in the future. I'm on the right  
2 path in rebuilding my life and I am confident that I will  
3 continue on the path and will be successful in that  
4 endeavor.

5 I feel intent to return to my family, become  
6 law abiding citizen, get my life back on track from which  
7 it went off, and never again give myself the slightest  
8 excuse to end up in jail again.

9 I know, your Honor, you will do what you  
10 believe is right and I'm fully prepared to accept  
11 whatever decision you make. I got myself into this  
12 predicament and I should take responsibility for my  
13 conduct. The only thing I want to promise you is that I  
14 will never again appear as a criminal defendant in any  
15 courtroom since I fully learned my lessons. Thank you.

16 THE COURT: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



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1 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
2 [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED],

4 I have of course also considered all of the relevant  
5 factors set out by the United States Congress at 18 U.S.  
6 Code Section 3553(a), the statute that directs federal  
7 judges to consider certain factors in connection with  
8 sentencing. I have considered the advisory guidelines  
9 range in this case and I've considered the other factors  
10 under Section 3553(a) and otherwise including the need  
11 for a sentence to reflect the seriousness of the crime in  
12 this case, the need to promote respect for the law, to  
13 provide just punishment for the offense, and also, and  
14 this is always an important one from my perspective, to  
15 deter potential criminal conduct by both the defendant  
16 sitting before me at the time of sentencing and also  
17 anybody else out in the world who might be inclined to  
18 engage in conduct of this kind in the future.

19 I've also of course considered the specific  
20 nature and circumstances of the offense conduct here and  
21 also Mr. Ovsyannikov's personal history and  
22 characteristics.

23 As always, there are both aggravating and  
24 mitigating factors here. When I say aggravating, I mean  
25 the factors that tend to support a higher sentence, and

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1 when I say mitigating I mean the factors that tend to  
2 support a lower sentence. The judge's task at sentencing  
3 of course is to balance both of those.

4 Let me talk about the aggravating factors first  
5 and then go on to discuss the very important mitigating  
6 factors thereafter.

7 So the offense conduct in this case is serious  
8 and of course that weighs on the aggravating side of the  
9 scale here. In some ways the offense conduct is perhaps  
10 even more serious than that of Mr. Zhukov, the financial  
11 losses were greater. And perhaps even more importantly,  
12 the part of the scheme over which this defendant presided  
13 involved the actual compromise of third-party computers  
14 that were through viruses or malware or otherwise co-  
15 opted to participate in the advertising fraud scheme.  
16 Computers are of course for better or worse a very  
17 significant part of people's connection to the world  
18 these days and when someone's computer is compromised or  
19 degraded or otherwise by a virus, by malware, or by  
20 whatever, that has real world consequences for real human  
21 beings.

22 Further on the aggravating end of the spectrum  
23 here, it is clear that Mr. Ovsyannikov played a  
24 significant leadership role as we discussed. This was a  
25 sophisticated scheme. I think the government could have

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1 sought the inclusion of an enhancement for sophisticated  
2 means here. I don't think that I listed that in my  
3 guidelines calculation. Is that correct?

4 MR. MINDLIN: Your Honor, I think it was  
5 applied.

6 THE COURT: I'm sorry?

7 MR. MINDLIN: I'm looking at the guidelines  
8 calculation, your Honor. Your Honor, the enhancement  
9 that you applied for a scheme committed from outside the  
10 United States is the same enhancement as the otherwise  
11 sophisticated scheme. So you effectively did apply that  
12 enhancement.

13 THE COURT: So jog my memory then. Didn't both  
14 enhancements apply in Mr. Zhukov's case? It's not  
15 particularly relevant here but I'm trying to do the gap  
16 analysis in my head a little bit to understand why Mr.  
17 Zhukov's guidelines were so much higher. I'm going to  
18 give the government a minute to talk about that amongst  
19 themselves.

20 I'll just continue for my part to say  
21 regardless of how it applies, regardless of how it  
22 affects the sentencing guidelines, this was a  
23 sophisticated scheme and obviously highly sophisticated  
24 criminal behavior is more dangerous in many ways than  
25 unsophisticated criminal behavior.

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1           Finally, on the aggravating end of the spectrum  
2 is the fact that, you know, so much of this scheme was  
3 committed from outside the United States, and we've  
4 talked at length in Mr. Zhukov's sentencing proceeding  
5 and don't need really to rehash here in its entirety the  
6 difficulties that the government has with respect to  
7 investigating criminal behavior abroad, obtaining process  
8 like arrest warrants for defendants who are located  
9 abroad and bringing that kind of criminal activity to  
10 justice in the United States. Mr. Mindlin?

11           MR. MINDLIN: Your Honor, I can address the gap  
12 in the guidelines if you'd like --

13           THE COURT: Yes, please.

14           MR. MINDLIN: -- that you referred to. So  
15 first, the enhancement that you referred to, there is a  
16 single enhancement under 2B1.1(b)(10)(B) which covers  
17 offenses that are either committed from outside the  
18 United States substantially or involved sophisticated  
19 means. So the enhancement that your Honor applied for an  
20 offense outside the United States is the sophisticated  
21 means enhancement.

22           THE COURT: Yes. For some reason I thought  
23 that both enhancements applied in Mr. Zhukov's case. I  
24 could be wrong.

25           MR. MINDLIN: Well there were significant other

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1 reasons that Mr. Zhukov's guidelines were higher, your  
2 Honor. One is of course that he did not receive the  
3 three points off for acceptance of responsibility.

4 THE COURT: Right.

5 MR. MINDLIN: He also received two more  
6 points --

7 THE COURT: Obstruction.

8 MR. MINDLIN: -- because the conduct involves  
9 money laundering and, yes, two points because of his  
10 perjured testimony.

11 THE COURT: Okay. That is very helpful, so  
12 thank you.

13 Let me turn to the mitigating side of the  
14 scale. Primary on that side of the scale is Mr.  
15 Ovsyannikov's acceptance of responsibility. I can't  
16 overstate the importance, especially in a case like this  
17 where so much of the conduct occurred abroad beyond the  
18 easy investigative reach of United States law enforcement  
19 of the decision that this defendant made to accept  
20 responsibility [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

23 And I'm certainly persuaded by comments that  
24 both sides have made about the personal costs that that  
25 acceptance of responsibility and everything that flowed

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1 from it imposed on Mr. Ovsyannikov. I do not at all  
2 diminish the costs of having to be in quarantine for long  
3 periods of time because you are coming in and out of the  
4 facility at the MDC. I've had a number of defendants in  
5 other cases over the past year and a half express extreme  
6 dissatisfaction let's say with having to come to court  
7 for a status conference let's say because of the very  
8 serious consequences that flow from that in terms of  
9 needing to be quarantined on return to the MDC. And I've  
10 said it before in other contexts and will say it again  
11 here, you know, it's not the fault of the Bureau of  
12 Prisons that they found themselves dealing with the  
13 pandemic that they did over the last year and a half, but  
14 everybody would agree that The Bureau of Prisons should  
15 be striving at all times to house inmates in better  
16 circumstances, more humane circumstances than the  
17 pandemic and the effort to mitigate it dictated over the  
18 last year plus.

19 I won't go on and on about the quality of the  
20 defendant's acceptance of responsibility [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

25 Mr. Ovsyannikov has strong family ties as

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1 evidenced by the letters that I received from so many  
2 people. He has, I think this is important, a history of  
3 gainful employment. That was something I was going to  
4 discuss [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
5 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. That's an important  
6 distinguishing factor I think between this case and Mr.  
7 Zhukov's case where as the government noted, we were  
8 dealing with an individual who had essentially been in  
9 the business of committing advertising fraud as a career  
10 rather than somebody who made a brief error in an  
11 otherwise law-abiding life.

12 We have a first-time offender here in Mr.  
13 Ovsyannikov. And in addition to the very harsh  
14 conditions at the MDC that you experienced during the  
15 worst part of the COVID epidemic, we also have the fact  
16 of your incarceration in Malaysia for what I understand  
17 is just over four months in even worse conditions, and I  
18 think that that in any assessment of the aggravating and  
19 mitigating factors here is something that has to weigh in  
20 your favor.

21 Finally, as was the case with Mr. Zhukov as  
22 well, we're dealing with harm that is relatively  
23 dispersed among lots and lots of victims. I'm not saying  
24 that that in any way excuses the decision to basically  
25 steal money from others, but this case is distinguishable

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1 from some fraud cases that we see here in that you didn't  
2 have individuals whose lives were destroyed by the loss  
3 of their life savings or other particularly egregious  
4 aggravating factors like that.

5           So just summing up on where we are, you know,  
6 describing the landscape before I impose sentence myself,  
7 the United States Sentencing Guidelines range as we said  
8 is 151 months at the low end. The defense has requested  
9 a sentence of time served which I believe is  
10 approximately 33 months at the MDC. The probation  
11 department has requested 68 months custody on counts 1  
12 and 5 as I mentioned to run consecutively to 24 months  
13 custody on count 7 for a total of 92 months.

14           My view is netting down all these factors  
15 together that a sentence of 36 months of incarceration in  
16 total is the right amount of time in prison to satisfy  
17 the sentencing factors in the goals of sentencing as set  
18 out in Section 3553(a). That may well be a sentence of  
19 time served. I'm not precisely sure how the math works  
20 out there.

21           In terms of mechanics, I will impose a sentence  
22 of 24 months each on count 1 and count 5 to run  
23 concurrently to one another. And then on count 7,  
24 pursuant to the downward departure that I have indicated  
25 I am granting here, a 12-month sentence which by statute



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1 we have established must run consecutively. So 24 months  
2 on count 1, 24 months on count 5, counts 1 and 5 to run  
3 concurrently with one another, and 12 months on count 7  
4 to run consecutive to the sentences on counts 1 and 5.  
5 And if I'm thinking through this correctly, that will  
6 mean a grand total of 36 months in prison. Do I have  
7 that right?

8 MR. MINDLIN: Yes, your Honor, that's how I  
9 take it.

10 THE COURT: Okay. Does the defense have any  
11 questions or comments on that?

12 MR. GRASSO: I concur with that, your Honor. I  
13 believe that leaves about three months from time served.

14 THE COURT: Well, any sentence greater than one  
15 year, so as long as you're serving a year and a day or  
16 more in the United States system, you become eligible for  
17 a 15 percent reduction if I understand this correctly,  
18 and 36 months times 85 percent, he may be below the 33  
19 months that he's already served.

20 MR. GRASSO: Yes, your Honor.

21 THE COURT: The reason I say I don't know if  
22 this is time served or not is because the good time  
23 served calculation of what part of that 15 percent  
24 discount is appropriate is not mine to make. That's the  
25 Bureau of Prisons and they will endeavor to make it

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1 hopefully very quickly.

2 MR. GRASSO: Yes, your Honor. Thank you.

3 THE COURT: I will impose a supervised release  
4 term of two years but I want to state explicitly that I  
5 do not believe the defendant needs to be kept in the  
6 United States for supervised release if he's otherwise  
7 going to be removed or deported. Nothing about the term  
8 of supervised release that I'm imposing should affect  
9 that removal or deportation. But to the extent he's in  
10 the United States for whatever reason, I do make it a  
11 condition of supervised release that he comply with the  
12 restitution payment schedule in a restitution order to be  
13 issued. And as always, I invite the government to pipe  
14 up with any questions or comments they have now or later.  
15 The defendant, to the extent he's here, should provide  
16 the U.S. Probation Department, or continue to provide the  
17 U.S. Probation Department with full disclosure of his  
18 financial records as he did today in the financial  
19 affidavit that he submitted.

20 And finally, based on the information in the  
21 PSR, I think the defendant should be excused from any  
22 mandatory drug testing provisions under 18 U.S. Code  
23 Section 3583(d). However, if he's here and subject to  
24 supervised release, he may be requested to submit to drug  
25 testing from time to time.

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1 I have already entered the final forfeiture  
2 order in this case, correct?

3 MR. MINDLIN: Yes, your Honor, you did. It's  
4 Docket Number 151. You entered an order of forfeiture in  
5 the amount of \$14,626,206.50.

6 THE COURT: Okay. Do I have a copy of a  
7 restitution order? That, I have not seen.

8 MR. MINDLIN: No, your Honor.

9 THE COURT: So I'll just order on the record  
10 that the defendant is to pay \$33,800,000 in restitution  
11 to Google, which may mean Alphabet.

12 MR. MINDLIN: Now Alphabet.

13 THE COURT: And to do so at a rate of \$25 per  
14 quarter for any period that he remains in custody of the  
15 Bureau of Prisons, and at a rate of 10 percent of his  
16 monthly gross income thereafter. Based on that  
17 restitution order, I do not impose a fine because the  
18 restitution order will comprise his ability to pay a  
19 fine.

20 A mandatory special assessment of \$300 is  
21 required and I order that now. Taking all of this  
22 together I find that this sentence is sufficient but not  
23 greater than necessary to comply with the purposes of  
24 sentencing.

25 Is there anything else the government wanted to

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1 add about any aspect of the sentence I've just imposed?

2 MR. MINDLIN: Just a couple of housekeeping  
3 items, your Honor.

4 THE COURT: Please.

5 MR. MINDLIN: We'd ask if your Honor doesn't  
6 consider himself already to have done so that you orally  
7 pronounce the order of forfeiture.

8 THE COURT: Orally pronounce the order of  
9 forfeiture. So yes, the forfeiture order that I entered  
10 on the docket on October 21, 2020 --

11 MR. MINDLIN: My colleagues in asset forfeiture  
12 tell me that we ought to ask you to orally state that  
13 that that is a forfeiture amount as issued, as indicated  
14 in that order.

15 THE COURT: The forfeiture amounts indicated in  
16 that order, yes. I think that's just because the law is  
17 clear that the sentence is that which I impose on the  
18 record here today, not which emerges in any paperwork  
19 executed away from here. And so yes, let me just say on  
20 the record here that the forfeiture order I entered on  
21 October 21, 2020, I order that now and make that a part  
22 of the sentence in this case. Is that what you're  
23 asking?

24 MR. MINDLIN: Yes, your Honor. And we'd ask  
25 that it be attached to the judgment.

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1 THE COURT: And it shall be attached to the  
2 judgment. Thank you.

3 MR. MINDLIN: In addition, your Honor, we'd ask  
4 that you advise the defendant of his right to appeal.

5 THE COURT: Yes. Yes. So that, I have a  
6 little bit of housekeeping here which are first, are  
7 there any remaining counts that should be dismissed?

8 MR. MINDLIN: Yes, your Honor. The government  
9 moves for a dismissal of the following counts. As to Mr.  
10 Ovsyannikov only in the underlying indictment in this  
11 case, the first indictment, count 2, 6, 8, 9, 10, 11, 12,  
12 and 13.

13 THE COURT: That motion is granted. Mr.  
14 Ovsyannikov, you have a right to appeal. You can appeal  
15 your conviction if you believe that your guilty plea was  
16 somehow unlawful or involuntary, or if there is some  
17 other fundamental defect in these proceedings that was  
18 not waived either by your guilty plea or the plea  
19 agreement. In some circumstances, a defendant also has  
20 the right to appeal his or her sentence, not just the  
21 conviction. Any such notice of appeal must be filed  
22 within 14 days after the filing of the entry of a  
23 judgment in this case or within 14 days of the filing of  
24 a notice of appeal by the government. And if requested,  
25 the clerk of the court will prepare and file a notice of

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1 appeal on your behalf. If you can't afford to pay the  
2 cost of an appeal or for appellate counsel, you will have  
3 the right to apply for leave to appeal in forma pauperis,  
4 which is Latin for I don't know exactly what, but it  
5 means that the court system would pay the filing fee for  
6 you and would supply you with appellate counsel if you  
7 can't afford it on appeal.

8 Other housekeeping matters, the motion -- tell  
9 me exactly what you're moving to seal.

10 MR. MINDLIN: Your Honor, we move to seal the  
11 minutes of this proceeding.

12 THE COURT: In their entirety?

13 MR. MINDLIN: If your Honor preferred, the  
14 government could submit a, jointly with the defense, a  
15 proposed redacted selection of what to seal, [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED].

19 THE COURT: Yes. I mean just given that there  
20 are other co-defendants who may be sentenced in this  
21 case, there are reasons we can actually think of why  
22 somebody might want legitimate access to the record of  
23 today's proceedings. I would ask you to submit a  
24 proposed redaction even if we're going to see large  
25 swaths redacted rather than sealing the entire

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1 proceeding.

2 MR. MINDLIN: We'd ask only, your Honor, that  
3 the transcript not be filed on the docket until we've had  
4 a chance to make that proposal to the Court.

5 THE COURT: Indeed. Yes. We will abstain from  
6 filing anything publically until then. I do respectively  
7 direct the court reporter to produce a transcript of  
8 today's proceeding but for transmission to the court's  
9 deputy, not for filing yet on the docket.

10 Anything else from the government's  
11 perspective?

12 MR. MINDLIN: No, Judge.

13 THE COURT: Anything else from the defense  
14 perspective?

15 MR. GRASSO: No. Thank you, your Honor. I'll  
16 just join in the government's final two motions and I  
17 thank you for granting them as well.

18 THE COURT: Okay. Mr. Ovsyannikov, let me just  
19 say by way of summing up here this was a serious crime,  
20 needless to say, that you were engaged in. I do trust  
21 that you will use your obviously prodigious talents for  
22 good rather than otherwise as you go back to your family,  
23 your community, and return to society. I wish you the  
24 best of luck in your coming endeavors and hope, as you've  
25 indicated, that we not, you know, see you again in

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1 circumstances like this.

2 THE DEFENDANT: Thank you, your Honor. Thank  
3 you for trust.

4 THE COURT: All right. Thank you, everyone.  
5 We'll be adjourned.

6 MR. GRASSO: Thank you, your Honor. Thank you,  
7 everybody.

8 (Matter concluded)

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C E R T I F I C A T E

I, MARY GRECO, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 22nd day of December, 2021.

A handwritten signature in cursive script, reading "Mary Greco", is written over a horizontal line.

Transcriptions Plus II, Inc.